IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9017 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SONABEN MAMANBHAI JUNEJA

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN H DESAI for Petitioner No. 1-2

Ms.Sonalben Vyas, Assistant GOVERNMENT PLEADER, for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/10/2002

ORAL JUDGEMENT

The petitioners herein are the Ex-Sarpanch and

Upsarpanch of Amarapur (Kathi) Village in Manderda Taluka, Junagadh District. The petitioners have challenged the order dated 3.8.2002, passed by the State Government, which is at Annexure 'A', by which the Development Commissioner has passed an order under Section 253 of the Gujarat Panchayats Act, 1963, dissolving the aforesaid Panchayat.

Amarapur (Kathi) Panchayat was constituted on 155h January, 2002. The candidates were nominated by the Village people under Samaras Yojna. The say of the petitioners is that they were handed over charge by the Administrator only on 22.3.2002 and, therafter, meeting was convened for passing the budget. They also made a complaint on 13.3.2002 that charge was not handed over. Subsequently, Agenda was issued for passing the budget and the meeting was held on27.3.2002. On that day, no decision was taken for passing the budget and, thereafter, the budget was passed by issuing Circulating Resolution and, according to the petitioners, the budget was passed on 31.3.2002.

In the said meeting, according to the petitioners, four elected people abstained and four people, who were present in the meeting passed the budget, in which the Sarpanch also gave a casting vote. It is argued by the petitioners that though, it was not necessary for the Sarpanch to give casting vote, the said casting vote was given, and accordingly, budget was passed.

On the ground that the Panchayat has failed to pass the budget within the stipulated time, a notice was issued to it to show cause as to why the Panchayat should not be dissolved for not passing the budget within the stipulated time.

After hearing both the sides, the Development Commissioner passed the impugned order dissolving the Panchayat. The Development Commissioner came to the conclusion that passing of budget before 31st March is a mandatory provision, and since the Panchayat has failed to carry out the said mandatory provision, there is no option but to dissolve the Panchayat. On behalf of the petitioners, it is argued that provisions of Section 116 are not mandatory, but directory, as held by this Court in Special Civil Application No.6968 of 2002.

On behalf of the TDO, Mr.Munshaw, leaned Advocate, submitted that the Development Commissioner has also considered the merits of the case as he has come to

the conclusion that the Panchayat has failed to pass the budget within the stipulated time and that factual aspect is discussed in the impugned order of the Development Commissioner. Mr.Munshaw also further submitted that the Panchayat has failed to pass the budget even though it had ample time to pass the same. It is submitted that the first meeting was held on 15th January, 2002 for election of the Up-Sarpanch and, ultimately, son of the Sarpanch was elected as Up-Sarpanch. It is submitted that after the election, the Gram Panchayat prepared budgetary estimate and forwarded the same to the respondent No.2 and it was received by the respondent No.2 on 27th January, 2002 and, thereafter, the same were returned with remarks and instructions. He, therefore, submitted that the Budget was required to be approved on or before 31st March, 2002. It was not done in the instant case and, therefore, he has supported the order of the State Government.

Ms.Vyas, learned AGP, has also supported the order of the State Government.

After hearing both the sides, I am of the opinion that the Development Commissioner has committed an apparent error in reaching the conclusion that the provision of Section 116 is mandatory. Since this Court has already taken the view that the provision is directory, in my view, the matter is required to be sent back to the Development Commissioner for reconsidering the matter on merits. Since the aspect about mandatory part is already decided by this Court in Special Civil Applicaiton No.6968 of 2002, the matter is now required to be remanded to the Development Commissioner for deciding the issue on merits, whether it is a fit case in which the Panchayat was required to be superseded for not passing the budget by the stipulated time. Under these circumstances, the matter is sent back to the Development Commissioner for reconsideration, as stated above. It is clarified that this Court has not expressed any opinion no the merits of the issue and it is for the Development Commissioner to take decision as per the facts of the case. The matter is sent back only on the ground that the Development Commissioner has came to the conclusion that the provision is mandatory and not directory.

Mr.Munshaw, appearing for the TDO, has, however, submitted that the elected representative issued cheques without any authority and, therefore, it is submitted that till fresh decision is taken by the Development Commissioner, the Panchayat may be restrained from taking any policy decision. Mr.Desai for the petitioners, of

course, resisted the said request. However, in the facts and circumstances of the case, it is directed that the till the Development Commissioner takes fresh decision, the present petitioners, after resuming their charge, are restraining from taking any decision and the Panchayat thereafter shall not take any policy decision in connection with the administration of the village till the Development Commissioner takes fresh decision on this issue and if any amount is required to be spent for payment of essential services, then also, such amount may be spent byway of cheque only after getting prior approval of the TDO.

It is clarified that no policy decision may be taken and any other general policy decision if required to be taken the same may be taken only after taking the TDO into confidence. Without consulting the TDO in advance and without the approval of the TDO, no expenditure maybe incurred and no payment may be made without the prior approval of the TDO. If any breach is committed in this behalf, it would be open for the authority to take over the charge immediately without waiting any further.

Under the circumstances, the petition is allowed. The Development Commissioner is directed to take final decision latest by 30th November, 2002 and the parties are directed to cooperate in the final disposal of the matter by the Development Commissioner.

The effect of the order is that till the decision is taken by the Development Commissioner, the elected body will be entitled to continue to function.

The petition is accordingly allowed to the aforesaid extent. The order of the Development Commissioner is quashed and set aside. The matter is remanded to the Development Commissioner for taking fresh decision. The Development Commissioner shall therafter pass a fresh order after hearing the petitioners and after considering the material on record. Rule is made absolute accordingly with no order as to costs.

(P.B. Majmudar, J.)

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(apj)